

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 1093 of 1997****WITH****CRIMINAL APPEAL No. 1179 of 1997****For Approval and Signature:****HONOURABLE MR.JUSTICE A.L.DAVE****HONOURABLE MR.JUSTICE BANKIM.N.MEHTA**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

=====

RAMESHBHAI JAYANTIBHAI SHARMA & 1 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

=====

Appearance :

MR.J.M. PANCHAL for Appellant(s) : 1 - 2.
 MR.H.M.PRACHCHAK, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

=====

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 13/06/2006**ORAL JUDGMENT****(Per : HONOURABLE MR.JUSTICE A.L.DAVE)**

These two appeals arise out of judgment and order

rendered by learned Additional Sessions Judge, Ahmedabad Rural in Sessions Case No.11 of 1997 on 14/10/1997. The appellants came to be tried for offences punishable under Sections 3 and 4 of the Dowry Prohibition Act, Section 498 (A) read with section 114 of the Indian Penal Code, Section 302 read with Section 114 of the Indian Penal Code, Section 304 (B) read with Section 114 of the Indian Penal Code and Section 177 read with Section 114 of the Indian Penal Code by the trial Court and came to be convicted therefor. The learned trial Judge after recording conviction and after hearing the accused on aspect of sentence, sentenced the accused persons-appellants to undergo rigorous imprisonment for life and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for one month for offence punishable under Section 302 of the Indian Penal Code and concluded that no separate sentence is required to be awarded in respect of other offences.

2. Being aggrieved by the said judgment and order, the convicts have preferred Criminal Appeal No.1093 of 1997.

2.1 The State is also aggrieved on quantum of

punishment and has, therefore, preferred Criminal Appeal No.1179 of 1997 for enhancement of the punishment.

3. The appellants are respectively the son and the father. They are alleged to have committed the offence against wife of appellant No.1-Gitaben. It is the case of the prosecution that marriage of appellant No.1 and deceased-Gitaben was solemnized about six years prior to the date of incident in a mass marriage ceremony organized by the community. It is the case of the prosecution that the appellants were not satisfied about the customary gifts, etc, brought by the deceased and they were often demanding dowry. That demand being not satisfied, the deceased was meted out with ill-treatment.

3.1 It is the case of the prosecution that three days prior to the incident appellant No.1 had telephoned his in-laws that, he wants divorce and is prepared to pay for the same. He was told to keep patience till the following full-moon-day falling on 26/10/1996. However, the unfortunate incident is occurred on 25/10/1996 at about 4:00 p.m. at village Vavol, where the deceased was staying with the appellants. The mother of the deceased was informed about the incident and she rushed to village

Vavol. It was noticed that the deceased was lying near the door of the house in a burnt condition. It was also noticed that the mouth of the deceased was gagged with the handkerchief which was partially burnt and had reddish stains. The deceased had sustained substantial burns. The mother of the deceased therefore lodged the first information report with Police, on basis of which offence was registered and investigation was started. The Police after having found sufficient evidence against the appellants filed charge-sheet against them in the Court of J.M.F.C., Gandhinagar.

3.2 Since the offences were triable exclusively by the Court of Sessions, the case came to be committed to the Sessions Court, Ahmedabad Rural and Sessions Case No.11 of 1997 came to be registered.

3.3 Incidentally, it would be appropriate to record that before the first information was lodged, the Police was informed by the Sarpanch of the town regarding the incident and it was indicated that the deceased sustained burn injuries by accident. On basis of that, the accidental death came to be registered. However, because of the F.I.R., no further action seems to have been taken

in respect of that Accidental Death Entry.

3.4 Learned Additional Sessions Judge, Ahmedabad Rural framed charge against the accused-appellants at Exh.4. The appellants pleaded not guilty to the charge and claimed to be tried.

3.5 During the course of trial the prosecution examined relevant witnesses. The defence also examined witnesses and the trial Court after considering the evidence on record came to a conclusion that the prosecution was successful in establishing charges against the appellants and recorded the conviction and awarded the sentences as stated above, which has given rise to these appeals.

4. Learned Advocate, Mr.Panchal, appears for the appellants in Criminal Appeal No.1093 of 1997 and for the respondents in Criminal Appeal No.1179 of 1997. Learned A.P.P., Mr.Prachchak, appears for the State in both the appeals for the respondent and the appellant respectively.

5. Learned Advocate, Mr.Panchal, has taken us through the record and proceedings and the judgment, so

also, learned A.P.P., Mr.Prachchak.

6. Learned Advocate, Mr.Panchal, submitted that the prosecution case is founded on circumstantial evidence. According to Mr.Panchal, in absence of direct evidence, the prosecution was duty bound to establish a strong chain of circumstances to link the accused with the offences. In the instance case, such chain is not established. Many links are missing and many of the links established are weak. According to Mr.Panchal, the prosecution evidence itself is self-contradictory and two sets of evidence emerge therefrom.

6.1 Mr.Panchal submitted that, the set the evidence which is favourable to the accused ought to have been accepted by the learned trial Judge. The evidence which is used by the learned trial Judge to record conviction is not sufficient to support the conviction. According to Mr.Panchal, the evidence suffers from defects in form of improvements, contradictions and unnatural conduct on part of the prosecution witnesses. The learned Judge has recorded conviction on presumptions, assumptions and conjectures. Mr.Panchal submitted that, the prosecution case is that the two appellants set the deceased to fire.

Nowhere it is alleged that kerosene was used for the alleged action; whereas, the F.S.L. Report indicates that kerosene was found from the clothes of the deceased. Mr.Panchal submitted that, the postmortem notes and the evidence of the doctor, if seen, would indicate that there were no soot marks in the trachea or bronchi. Meaning thereby that there was no respiration when the deceased was set to fire. Therefore, the opinion of the doctor that cause of death is shock due to burn injuries and that burn injuries were antemortem gets falsified. These aspects are not appreciated by the trial Court.

6.2 Mr.Panchal submitted that deceased herself had, in past poured kerosene over herself about which accused No.1 had informed his in-laws. The deceased was brought up in a city like Ahmedabad and was not comfortable in a small village like Vavol, where; in the house of the accused basic facility of latrine was not available. This used to irk the deceased resulting into minor disputes between the husband and the wife. This aspect is emerging from evidence of Kantilal Harjivandas Nai (Exh.21). It also emerges from evidence of this witness that otherwise the relations between appellant No.1 and the deceased were cordial and smooth. These aspects

emerging from prosecution witness have not been considered by the learned trial Judge.

6.3 Learned Advocate, Mr.Panchal, submitted that the prosecution has not properly established the cause of death nor has it brought on record that the injuries were sufficient in ordinary course of nature to cause death of the deceased. Mr.Panchal submitted that, if the deposition of Dr.K.S.Patel (Exh.19) and the postmortem notes (Exh.20) are seen, it is clear that there were no sooting marks or carbon particles in trachea. Mr.Panchal submitted that if there were no marks of carbon particles in the trachea, it would indicate that respiration had stopped before the deceased sustained burns. In this context, if the certificate as to cause of death is seen, the doctor has opined that the death was caused due to shock due to burn injuries. Thus, medical evidence is self-contradictory and is not reliable, so far as it relates to the cause of death.

6.4 Mr.Panchal further submitted that the prosecution case on the whole is not that of the deceased having been done to death by setting her ablaze after pouring kerosene. Whereas, the F.S.L. Report speaks of

presence of carbon particles in the clothes of the deceased relatable to kerosene. Thus, the evidence of the prosecution itself is self-contradictory in this regard also.

6.5 It is also submitted by learned Advocate Mr.Panchal for the appellants that, there is no evidence to show presence of either of the appellants in proximity of time and / or place of incident. Whereas, the defence has adduced evidence to show that appellant No.2 was working as a Gate Keeper in Railways and was on duty on that day around the time when the incident occurred. Mr.Panchal, submitted that it is in evidence that the place of duty and the place of incident are not very far, but, in absence of any evidence that appellant No.2 was absent from his place of duty even for sometime or in absence of any evidence that appellant No.2 was near the place of incident, his conviction could not have been recorded. Mr.Panchal submitted that the trial Court has drawn certain presumptions and has founded the conviction on certain possibilities which is not permissible under the criminal jurisprudence.

6.6 Mr.Panchal submitted that so far as appellant

No.1 is concerned, he was also on duty and defence has led evidence in that regard. There is no evidence to show that the defence evidence is not believable or that appellant No.1 was seen in vicinity of place of the incident in proximity of time of the incident and, therefore he, also could not have been convicted.

6.7 Mr.Panchal submitted that the appellants were tried for a specific case of having tied the hands of the deceased; gagged her mouth; made her unconscious and then set her ablaze, but, there is no evidence worth a name so far as tying of hands are concerned and so far as making her unconscious is concerned.

6.8 It is indicated that the appellants have been convicted for the offence punishable under Sections 498 (A) and 304 (B) of the Indian Penal Code, so also, under Sections 3 and 4 of the Dowry Prohibition Act. It is submitted that the prosecution case consists of two sets of evidence. One set is in form of depositions of Kamlaben Mangaldas Vanand, the first informant and the mother of the deceased (Exh.16), Pravinkumar Mangaldas Parekh, brother of the deceased (Exh.18), Mohanlal Manchharam Parekh, uncle of the deceased (Exh.15). They

speaking of demands being made by appellant No.1 for dowry, causing harassment to the deceased therefor and ultimately resulting into the incident. These witnesses also allege that appellant No.1 had informed that deceased tried to commit suicide by pouring kerosene on herself and on inquiry, it was found that it was appellant No.1 who had poured the kerosene on the deceased. However, these witnesses have not taken any action in this regard, though they admit that they felt that the incident was of serious nature. Mr.Panchal, therefore, submitted that this conduct ought to have been viewed seriously by the trial Court.

6.9 Mr.Panchal, submitted that against the above set of evidence, there is evidence of Kantilal Harjivandas Nai (Exh.21), who stays in village Vavol itself and states that the deceased had dissatisfaction about lack of basic facility like latrine, etc., that the deceased was brought up in Ahmedabad and was not comfortable in village like Vavol and that she used to complain about the same to him. He also says that this dissatisfaction resulted into disputes between the spouses, but, there were no disputes so far as dowry is concerned and their relations were otherwise smooth.

Mr.Panchal, submitted that this witness has not been declared hostile and therefore his deposition has to be accepted, as it is. If this is so, there are two sets of evidence emerging from the prosecution case and one which is favourable to the accused may be accepted.

6.10 Mr.Panchal, submitted that the defence has examined a witness, who has stated that the custom of dowry was abolished by the community by passing appropriate Resolutions and mass marriage functions were arranged by the community in respect of the couples, who agreed to the resolution. There was also a resolution that anybody who commits breach of such resolution regarding abolition of dowry was to be imposed with a fine. Mr.Panchal, submitted that there is total absence of material to show that such complaint was made against the appellants or any such fine was imposed. Under the circumstances, the allegations made by the prosecution witnesses relating to the demand of dowry, etc are emerging only from interested witnesses and are without any corroboration. The trial Court ought not to have given any weightage to this evidence.

6.11 Mr.Panchal, submitted that so far as charge for

offence under Section 177 read with Section 114 of the Indian Penal Code is concerned, the prosecution evidence itself; as emerging from the deposition of Investigating Officer; is clear that neither of the appellants had given any false information regarding leakage of gas and accidental burns sustained by the deceased. The conviction for that offences is also, therefore, erroneous.

6.12 Mr.Panchal, submitted that the prosecution case is; therefore; erroneously held to have been proved against the appellants by the trial Court. The trial Court has overlooked the fact that a complete chain of circumstances has not been established by the prosecution. There are missing links and there are links which are weak to connect the accused with the crime. The evidence led by the prosecution is self-contradictory and divided into compartments and, therefore, this appeal may be allowed and the judgment and order recording conviction; impugned herein; may be set aside and the appellants be acquitted of all the charges levelled against them.

7. Learned A.P.P., Mr.Prachchak, has opposed the

Criminal Appeal No.1093 of 1997. He submitted that the marriage between the deceased and appellant No.1 was solemnized about six years prior to the incident. The deceased had met with an unnatural death and, therefore, inference is required to be drawn against the appellants. Mr.Prachchak, submitted that in a case of circumstantial evidence, it is not proper to expect from the prosecution to establish every small detail to prove the incident. The case is clearly that of homicide because mouth of the deceased was gagged and she was set to fire. She has died of burn injuries as per medical evidence and therefore, it could not have been an accident or suicide. The deceased was staying with the appellants and necessary inference therefore would be that the appellants are responsible for the death of the deceased. Mr.Prachchak, submitted that this inference gets support from evidence of the first informant-mother of the deceased, witnesses, Mohanlal and Pravinkumar, who unanimously state that deceased was ill-treated, that appellant No.1 used to demand dowry and ultimately he wanted divorce.

7.1 Mr.Prachchak, submitted that even, F.S.L. Report indicates that there was presence of carbon

particles relatable to kerosene in the clothes of the deceased. All these factors taken collectively would lead to legitimate inference that the appellants are responsible for the death of the deceased.

7.2 Commenting on the defence version, Mr.Prachchak submitted that place of work of appellant No.2 is in the vicinity of the place of the incident. The defence has not led specific evidence that appellant No.2 was present on duty throughout the period of his duty and that he did not leave the place at all and, therefore, the appellant No.2 could have conveniently indulge in commission of crime without being noticed.

7.3 So far as appellant No.1 is concerned, the evidence of his employer is also not sufficient to show that he was on duty at the time of incident and that he had not left the place of duty at all. The defence has therefore not proved alibi properly.

7.4 Mr.Prachchak, submitted that in light of the evidence, the trial Court has properly and correctly recorded conviction and therefore, the Criminal Appeal No.1093 of 1997 may be dismissed and conviction may be

confirmed.

7.5. Mr.Prachchak, submitted that State has preferred the Criminal Appeal No.1179 of 1997 for enhancement of sentence. According to Mr.Prachchak, the trial Court has recorded conviction of the appellants for all the charges levelled against them. The charges are of serious nature. The nature of offence is not a mere case of murder, it is an offence against the society as a whole. The trial Court has overlooked the fact that in such a case, the punishment may be imposed in a manner which would set an example and deter other persons from committing such crime. Mr.Prachchak, therefore, submitted that this is a case which is to be considered as rarest of rare case where a helpless lady is done to death by gagging her mouth and putting her to fire. He, therefore, submitted that the Criminal Appeal No.1179 of 1997 preferred by the State may be accepted and the respondents-convicts be imposed with capital punishment or at least separate punishments for each offence with a direction to run consecutively may be imposed.

8. We have considered rival side contentions in light of the evidence on record. We have also given a close scrutiny to the evidence and the judgment of the

trial Court.

9. There is no dispute on the aspect that the case rest on circumstantial evidence and there is no eye-witness to the incident. Therefore, we are required to examine as to whether the prosecution has established a complete chain of circumstances to link the accused with the crime. If, it is found that, any link is missing or any link is weak, the benefit has to go to the accused-convict.

10. Prosecution Witness No.1, Laxmanbhai Nathabhai Marvadi (Exh.10) is the Panchwitness, in whose presence Panchnama of recovery of clothes of the deceased was made by drawing Panchnama. By and large, he supports the prosecution case and states that a saree, a blouse, a brassier, a petticoat, an underwear and a handkerchief used for gagging the mouth, were recovered in his presence by drawing the Panchnama.

11. Prosecution Witness No.2, Babarbai Jagmalbhai Rabari, is the Panchwitness to the Inquest Panchnama. He also supports the prosecution case by and large and there has been no cross-examination to his deposition.

12. Prosecution Witness No.3, Mohanlal Manchharam Parekh is examined at Exh.15. He is the uncle of the deceased. He says that there is no custom of giving any dowry, but, deceased-Gita had difficulty as the accused persons were demanding dowry. Appellant No.1 used to send her back to her parental house after ill-treatment. Appellant No.1 was used to ill-treat her and send her to her parental house and the mother of the deceased used to send Gita back to her matrimonial house. About a month and a half prior to the incident, a phone was received by Kamlaben, the mother of the deceased that deceased had poured kerosene over herself. Kamlaben therefore went to the house of the deceased and had settled the disputes. There was similar phone call from appellant No.1 on second occasion. At that time, Pravin was sent and when he came back he informed that according to deceased, she had not poured kerosene, but, it was poured by appellant No.1 and because she raised shouts, appellant No.1 gave a false information on telephone. Witness says that about two days prior to the incident, appellant No.1 had telephoned him and informed that he does not want Gita. He wants divorce and is ready to pay any amount for the purpose. Witness says that he would be going to the place of appellants on full-moon-day and therefore, he

may keep patience till then.

12.1 A day previous to the incident, they received message that deceased had sustained burn injuries and therefore, he alongwith Kamlaben, nephew Dhuru, Pravin, few friends of Pravin, etc went to Vavol. They found that deceased was lying near the door in a burnt condition; her mouth was gagged. Deceased was taken to Gandhinagar Civil Hospital for postmortem. The incident occurred because of dowry demands by the appellants and harassment therefor.

12.2 Witness has been cross-examined at length. Apart from other admissions, he admits that the matrimonial house of the deceased consisted of only one room and there was no facility of latrine. He also admits that deceased-Gita used to complain in this regard to her mother. He also admits that because of the fact that there was lack of facility of latrine, that the room was too small and that Vavol was a village, deceased-Gita did not like to stay there and, therefore, she used to have disputes with the appellants. He admits that mother of the deceased-Gitaben used to tell Gita that she has to stay in the circumstances in which she is put.

13. The first informant-Kamlaben, mother of the deceased is examined at Exh.16. She also deposes on the same line. She admits that there is no custom of dowry in the community and the parties have to file an affidavit before group marriage organized by the community. She also admits that a fine of Rs.5,000/- is imposed, if any of the parties, commits breach of the rule abolishing dowry. She says that she has not made any complaint regarding demand of dowry by the appellants or any harassment being meted out to deceased-Gitaben by the appellants for fulfillment of demand of dowry. She says that she felt that intimation about deceased having poured kerosene was of a serious nature, but she did not go to Vavol. She says that Pravin went on the next day. She says that Pravin had persuaded Gitaben and Rameshlal not to take any such steps. Witness admits that on the day of incident, she was at Vavol for the whole night. She says that when the Police came, she was very much present. She also states that at that time, Kantibhai, the appellants and her brother-in-law, Mohanlal were all present. She admits that appellant No.1 used to tell her on telephone that Gita is not comfortable at Vavol, that she does not like him and therefore, Gita may be persuaded.

14. Witness, Pravinkumar Mangaldas Parekh, brother of the deceased is examined at Exh.18. He says that when he went to Vavol on receiving information from appellant No.1 about Gita having poured kerosene, he was told by Gita that, it was appellant No.1 who had poured kerosene on her and that on her raising shouts, he went away and before she could telephone, appellant No.1 telephoned and informed about Gita having poured kerosene on herself.

14.1 Witness says that when he went to Vavol on receiving information of Gita having sustained burns, he found her lying near the door in a burnt condition; her mouth was gagged. Gas, stove and cylinder were intact. The cremation was done in his presence at Vavol. The first information was lodged later on by his mother. He says that appellant No.1 wanted to have divorce and Gitaben was not agreeable to it. He admits that he knows through his mother about Gitaben being meted out with the harassment by the appellants and learnt about same from the deceased.

15. Dr.K.S.Patel is examined at Exh.19. He says that he had performed the postmortem. Most of the body

was burnt, except right arm, right thigh, right leg and lower back i.e. hips. He says that there were no marks of resistance or defensive injuries. No fracture was noticed. There was no smell of kerosene either from the body or from the clothes. Reddish liquid was oozing from the nose. There were no carbon particles in the trachea. Doctor says that cause of the death could be shock due to burn injuries. According to doctor, the approximate time of injury was about 12 hours prior to 9:00 a.m. on 26/10/1996 i.e. somewhere around 9:00 p.m. on 25/10/1996.

15.1 Doctor has been cross-examined and he admits that a person while trying to commit suicide may gag mouth himself or herself to avoid raising shouts. The postmortem notes are at Exh.20. The final cause of death certificate is at Exh.22.

16. Witness Kantilal Harjivandas Nai is examined at Exh.21. He says in his examination in chief that relationship between Gita and her husband, appellant No.1 was good, but Gita was not comfortable at Vavol, as there was no facility of toilet and bathroom and as Gita was brought up in city. He says that because of this, off and on there were disputes. During cross-examination,

this witness has stated that there was no harassment to Gitaben from her husband on account of dowry. He in term states that none of the appellants have ever demanded any dowry either from Gita or from her mother. He states that no complaint whatsoever has come to him either from Kamlaben or Gita regarding demand of dowry or any harassment on account of dowry. He says that Gita used to tell him that she is finding it difficult to stay at Vavol because, it is a village and because there is no facility of latrine. He says that he had told Kamlaben about the same and Kamlaben told him to persuade Gita in this regard. Witness also says that for going to the railway crossing from the house of Gita, one has to pass through the bus stand and market.

17. Witness, Shantaben Mohanlal Vanand, aunt of the deceased is examined at Exh.28. On scrutiny of her evidence, it appears that her evidence is more or less in form of hearsay as per her own admission in cross-examination.

18. Witness Amit Vashrambhai Raj, the Investigating Officer, is examined at Exh.30. He says that on 25/10/1996, he had received a telephone call from the

Sarpanch of Vavol that Gita had died because of burns injuries suffered by her because of gas leakage and that he had registered an accidental death at Entry No.29 of 1996 in the A.D. Register. Witness refers to several documents and deposes about the investigation made by him. During cross-examination, the defence has proved the contradictions, additions, and omissions. He also deposes about the topography of the house of the deceased.

19. The statements of accused persons were recorded by the trial Court under Section 313 of the Criminal Procedure Code; where the accused persons (appellants) have by and large stated that the evidence is false. However, an additional statement in writing is made where they have jointly stated that the marriage was performed in a mass marriage function organized by the community. That dowry is neither demanded nor given in such marriages and anybody who commits breach of this rule, is imposed with a fine of Rs.5,001/- by the community. It is also stated that deceased was unhappy about lack of facility of latrine. That the marriage was performed without the spouses meeting each other prior to the marriage and deceased did not like appellant No.1.

Whenever the deceased went to her parental house, Kamlaben used to send her back and used to tell her that she should not go to her parental house. Kamlaben even used to tell appellant No.1 that he should not send deceased to her parental house. This used to hurt the feelings of the deceased and she had tried to commit suicide in past by pouring kerosene. As regards the incident, it is stated that the deceased committed suicide when both the appellants were out on job.

20. The defence has examined witnesses. Witness, Shanabhai Joitabhai Nai is examined at Exh.36 to prove that the marriage was performed in mass marriage function organized by the community. This witness is the Principal in the Primary School at Bhadol and he is the president of the community since 1995. He has produced documents to show that marriage was performed in a mass marriage function organized by the community with an undertaking that they would abide by the rules of the community.

21. Defence Witness No.2, Virendrakumar Punjabrav Nagpurkar is examined at Exh.41. He is the Station Master at Gandhinagar. He says that on the day of incident, i.e. on 25/10/1996 appellant No.2 was on duty

between 9:00 a.m. and 7:00 p.m. as a gate man at level crossing No.20 near Vavol. He says that certificate produced at Exh.44 was issued by him. In cross-examination to the Public Prosecutor, he denies a suggestion that a gate man can go to his house and come back during duty hours. He says that he had inquired about Jayantibhai over telephone. He had made two telephone calls. One at 9:30 a.m. and second at 1:00 p.m. He denies suggestion that he has given false deposition because of his good relation with appellant No.2. Witness has produced all relevant documents in support of his deposition.

22. Witness, Patel Yogendrabhai @ Bharatbhai Harjivanbhai is examined at Exh.46. He is the employer of appellant No.1 with whom appellant No.1 is working as a peon. He says that on the day of incident, appellant No.1 was on duty from 9:00 a.m. to 6:00 p.m. Appellant No.1 is the only peon in the office. Witness says that he was in the office for the whole day when appellant No.1 was also in the office. He says that appellant No.1 had not enjoyed any recess on that day. He says that they maintained a muster roll and copy is produced at Exh.49. In the muster roll presence is marked twice.

Once in the morning and second in the afternoon. He has also produced supporting documents of contemporaneous nature.

23. From the evidence, we find that the investigation has not been properly done. The Investigating Officer has failed to record the statements of neighbouring witnesses. Prosecution has failed to examine those witnesses of whom statements have been recorded. They would assume importance in view of the fact that the case depends on circumstantial evidence. Prosecution Witness No.11, P.S.I. Vinubhai Ranchhodbhai Patel has admitted that he had not included statements of Baldevbhai Kalidash, Keshabhai Fakirbhai, Govind Mangaldas, Madhuben Govindbhai in the charge-sheet, as he did not find it necessary to do. Likewise, P.S.I., Amit Raj (Exh.30) does not appear to have made any investigation on the information given to him by the Sarpanch about accidental death. He has not recorded the statement of the Sarpanch. Prosecution has not examined the Sarpanch as a witness. In-fact, the information given by the Sarpanch was the first information received by the Police about the incident, which was regarding accidental burns sustained by the deceased. Whether that

information was correct and on what basis that information was given, has not been investigated upon and the offence is registered and accused persons charge-sheeted on basis of first information given by the first informant in very peculiar circumstances. Those circumstances are that on receiving information, the first informant with her son, her brother-in-law and other relatives goes to Vavol and notices that the deceased was lying in a burnt condition and that her mouth was gagged. The postmortem was performed. The first informant and other relatives stay at Vavol for whole night during which period Police was also present and still no complaint was made to the Police. May be in terms of time the delay is not much in lodging the F.I.R., but the circumstances in which the delay has occurred, it certainly is an inordinate delay, which has remained unexplained by the prosecution.

23.1 What emerges therefore is that the investigation has started and has proceeded on basis of a delayed F.I.R. and no action is taken in respect of information given by the Sarpanch regarding same incident which is prior in point of time.

24. From the prosecution witnesses, we find that the evidence regarding cause of death is not sufficient to inspire any confidence. Doctor says that there was absence of carbon particles in the trachea. He also says that the cause of death is shock due to burns injuries. Presence of sooting signs or presence of carbon particles in trachea would be present because of inhalation of air containing carbon particles which get deposited in the trachea. Absence of such particles would indicate that there was no inhalation while the fire was on.

24.1 In this regard, *HWV COX Medical Jurisprudence and Toxicology* may be referred too. In *Section IV at page 541*, it is observed, "if soot and carbon particles are found in the larynx, trachea, main bronchi and smaller bronchi, then respiration must have been proceeding during the conflagration and therefore the fire was in progress during life." Differently put, if the fire was in progress during the life, then carbon particles are to be found in larynx, trachea, etc. Conversely put, if there is absence of carbon particles in trachea, there was no respiration (inhalation) and therefore, there was no life.

24.2 Reference can also be had to ***SIXTH EDITION of Parikh's Textbook of Medical Jurisprudence , Forensic Medicine and Toxicology for classrooms & courtrooms, published by CBS Publishers & Distributors. In Section 5 of Thermal Injuries at page No.4.160 and 4.161, the differentiating features of antemortem from postmortem burns are tabulated, which is as under.***

		Antemortem Burns	Postmortem Burns
1	Line of redness	Present	Absent
2	Vesicles:	Contain albuminous fluid and chlorides	Contain air
3	Infection:	Pus and sloughing	Nil
4	Healing:	Granulation	Nil
5	Soot in upper respiratory tract:	Present	Absent
6	Carboxyhaemoglobin in blood:	Present	Absent
7	Enzymes:	Increase in enzymes	No such increase

Item No.5 in the table is of relevance where, it is indicated that if the burns are postmortem, there would be absence of soot in the upper respiratory tract which condition is found to be present in the instant case and therefore, we are of the opinion that cause of death opined by the doctor gets no support from authentic books of Medical Jurisprudence, therefore, it is not beyond doubt on its acceptability. The prosecution therefore

suffers from defect of lack of reliable evidence regarding cause of death which assumes greater importance when the case is depending on circumstantial evidence.

25. The case regarding demand of dowry and harassment to the deceased for satisfaction of the dowry has to be seen in light of evidence of Mohanlal Manchharam, Kamlaben Mangaldas Vanand, Pravinkumar Mangaldas Parekh and Shantaben Mohanlal Vanand on one hand and Kantilal Harjivandas Nai on the other. The first set of witness depose about demand of dowry and harassment therefor. Appellant No.1 giving false information about pouring of kerosene by the deceased and appellant No.1 demanding divorce. Against this, there is evidence of Kantilal Harjivandas Nai (Exh.21). Kantilal Harjivandas Nai is resident of Vavol and seems to have relations with both the families. His case is that relations between the deceased-Gita and appellant No.1 were good except, minor disputes regarding want of latrine facilities in the house. He, in terms, says that there was never a demand of dowry by the appellants nor was there any harassment meted out to the deceased on this account.

25.1 What emerges therefore is that the prosecution has led two sets of evidence. The first set of evidence which is positive about dowry demand is coming from close relatives of the deceased viz., mother, brother, uncle and aunt. Therefore, evidence has to be weighed, keeping in light the fact that, despite the alleged demands, alleged harassment, alleged false information about deceased having poured kerosene on herself and alleged act of appellant No.1 of pouring kerosene on the deceased and despite considering this development to be serious, they have not taken any action either of lodging a complaint to the Police or of informing the community people or of calling the deceased back from her matrimonial house. Apart from this, the conduct of the first informant and witness Pravin after the incident is also very relevant. When the incident occurred and they went to the house of the deceased, they noticed deceased was lying in a burnt condition with her mouth gagged with a handkerchief. The Police goes there, gets the postmortem performed. These two witnesses were very much present at Vavol during the whole night. Thereafter, cremation ceremony is performed and still they raise no voice of complaint either to community people or to the Police, nor do they take any action against the

appellants in this regard. It is only at a later point of time that, the F.I.R. is lodged by the mother of the deceased.

25.2 It also cannot be overlooked that during interregnum period, the Police has received information from the Sarpanch about the deceased having sustained burns injuries. However, no investigation is made in this regard. Be that as it may, the fact remains that here is a case where the conduct of the first informant and other prosecution witnesses deposing against the appellant regarding demand of dowry, ill-treatment, etc is not a natural human conduct which is pitted against deposition of any other prosecution witness, who can be considered as an independent witness who had an opportunity to know the relations between the appellants and the deceased. He had relations with both the families which would enable him to know the details of the family relations. He says that there was never any demand of dowry, there was never any harassment on this account, though there were some minor difference between the husband and the wife regarding facilities in the house. The evidence therefore, gets divided into two compartments. One which is in favour of the accused and

one which is against the accused. The evidence which is against the accused suffers from several defects narrated above. Evidence in favour of the accused would certainly outweigh the evidence against the accused. Even otherwise, where there are two sets of evidence, one which is favourable to the accused is ordinarily to be accepted. The result therefore would be that the prosecution case depending on circumstantial evidence gets further weakened because of this weak linkage in form of allegations about dowry demand and harassment which may be considered as a motive for the alleged murder by appellants.

26. Now, if the evidence in respect of charge for offence punishable under Section 177 of the Indian Penal Code is examined, though, it is alleged that appellant No.1 gave false information to the Police about the deceased having met with an accidental death, the evidence in this regard is amply clear. Investigating Officer, P.S.I., Raj, has in his examination in chief itself stated that the information was given to the Police by the Sarpanch. Who that Sarpanch is, is not known. But, fact remains that information was given by the Sarpanch and that on basis of that information

accidental death was registered. No investigation is made in this regard on basis of that information. The charge that appellant No.1 gave false information does not survive on basis of the prosecution evidence itself and in absence of any other evidence, the trial Court could not have recorded conviction.

27. The sum total of the aforesaid discussion is that case against the appellants cannot be considered to have proved beyond reasonable doubt. There are missing links in the chain connecting the accused with the crime and benefit of that doubt and missing links must go to the accused-appellants.

28. As a result of the foregoing discussion, we are of the view that Criminal Appeal No.1093 of 1997 deserves acceptance and the judgment and order dated 14/10/1997 rendered by the learned Additional Sessions Judge, Ahmedabad Rural in Sessions Case No.11 of 1997 deserves to be set aside.

29. The appeal is, accordingly allowed and impugned judgment and order is quashed and set aside. The appellants are acquitted of all the charges levelled

against them and they are ordered to be set at liberty forthwith, if not required in any other case. Fine, if paid by the appellants, is ordered to be refunded to them.

30. Criminal Appeal No.1179 of 1997 preferred by the State is dismissed, in light of the fact that the Criminal Appeal filed by the respondents therein is accepted by this Court and they are acquitted of all the charges levelled against them.

(A.L.DAVE, J.)

(BANKIM N. MEHTA, J.)

sompura